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# TRANSMITTAL FORM

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Application Number	10/828,630
Filing Date	04/09/2004
First Named Inventor	Jill E. Parker
Art Unit	1645
Examiner Name	Mark Navarro

Total Number of Pages in this Submission

4

Attorney Docket Number

AFD 503

## ENCLOSURES (check all that apply)

Fee Transmittal Form

☐ Fee Attached

Amendment / Reply

☐ After Final

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☐ Extension of Time Request

☐ Express Abandonment Request

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☐ Certified Copy of Priority Document(s)

☐ Drawing(s)

☐ Licensing-related Papers

☐ Petition

☐ Petition to Convert a  
Provisional Application

☐ Power of Attorney, Revocation  
Change of Correspondence Address

☐ Terminal Disclaimer

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☐ After Allowance Communication to TC

☐ Appeal Communication to Board of  
Appeals and Interferences

☒ Appeal Communication to a Group  
(Reply Brief)

☐ Proprietary Information

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Remarks



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## SIGNATURE OF APPLICANT, ATTORNEY OR AGENT

Firm  
or  
Individual Name

Paul D. Heydon

Signature

*Paul D. Heydon*

Date

13 September, 2006

## CERTIFICATE OF TRANSMISSION / MAILING

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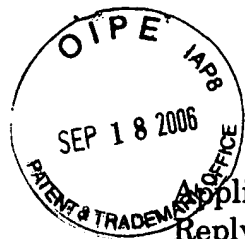
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Typed or printed name

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Date

13 September, 2006



Application No.: 10/828,630  
Reply Brief

Applicants: Jill E. Parker et al.  
Filed: 04/09/2004  
Title: Curlicue Vaccine Strain of Bacillus Anthracis  
T.C./Art Unit 1645  
Examiner: Mark Navarro  
Docket No.: AFD 503  
Customer No.: 26902  
Confirmation No.: 5340

Commissioner for Patents  
PO Box 1450  
Alexandria VA 22313-1450

### **Reply Brief**

Sir:

In response to the Examiner's Answer of July 14, 2006, the Assignee (Secretary of the Air Force) respectfully submits the following Reply Brief.

#### **Argument Concerning Claim 1**

As repeatedly stated by the U.S. Court of Appeals for the Federal Circuit, "the enablement requirement is met if the description enables any mode of making and using the invention." *Invitrogen Corp. v. Clontech Laboratories, Inc.*, 429 F.3d 1052, 1071 (Fed. Cir. 2005) quoting *Johns Hopkins Univ. v. Cellpro, Inc.*, 152 F.3d 1342, 1361 (Fed. Cir. 1998). See also *Amgen Inc. v. Hoechst Marion Roussel, Inc.*, 314 F.3d 1313, 1335 (Fed. Cir. 2003) and *Engel Indus., Inc. v. Lockformer Co.*, 946 F.2d 1528, 1533 (Fed. Cir. 1991).


The losing parties in those cases mistakenly fixed their attention on one particular mode that was not described in the specification. However, that particular mode did not need to be described in the specification, where the description enabled another mode of making and using the invention. This error is similar to the error found in the Final Rejection in this appeal: a mistaken emphasis on prevention, along with an improper focus on only one word taken out of its context in Claim 1: "vaccine." This one word is improperly treated as if it were a red flag that prevents patenting. See Final Rejection Page 4, Line 4 and Page 5, Line 21. This is not a reasonable explanation as to nonenablement. The Office has not met its initial burden of setting forth a reasonable explanation as to why it believes that the scope of protection provided by the claim is not adequately enabled by the description. The assignee respectfully asserts that a prima facie case of nonenablement has not been established.

### **Conclusion**

For the reasons advanced above and in the Appeal Brief, the Assignee respectfully contends that each claim is patentable, and requests the reversal of the Final Rejection.

Application No.: 10/828,630  
Reply Brief

Respectfully submitted,



Paul D. Heydon

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